

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER: 1880.02
 COMPLAINT INVESTIGATOR: Sandra Scudder
 DATE OF COMPLAINT: February 21, 2002
 DATE OF REPORT: March 22, 2002
 REQUEST FOR RECONSIDERATION: No
 DATE OF CLOSURE: May 29, 2002

COMPLAINT ISSUES:

Whether the Jay School Corporation violated:

-511 IAC 7-27-4(c) and 511 IAC 7-27-9(a)(6), (7), and (9) by failing to ensure the case conference committee (CCC) considered a continuum of options in determining the least restrictive environment for the student.

-511 IAC 7-27-9(a)(3) by failing to include in the student's individualized education program the reason a student is not being educated in the school the student would attend if not disabled.

-511 IAC 7-27-7(a) by continuing to provide therapy services identified in the student's IEP for which the parent had revoked consent.

-511 IAC 7-27-4(c) by failing to convene a CCC meeting at the parent's request.

-511 IAC 7-27-7(a) by failing to implement the student's IEP as written, specifically, failing to ensure that the student is seated in a front seat on the bus and that a seatbelt is utilized when the student is transported.

FINDINGS OF FACT:

1. The Student is 7 years old, is in the first grade, and is eligible for special education and related services as a student with an emotional disability, an other health impairment, and a communication disorder.
2. The School reports that the Student was deemed eligible for special education and related services on November 2, 2000, and remained in the home school as the least restrictive environment (LRE). On November 30, 2000, the CCC reconvened due to the Student's escalating behavior problems and determined the Student's LRE would be in a self-contained classroom for students with emotional disabilities which was located in a different school. The complainant signed the IEP in agreement with the change of placement.
3. The Complainant states that the CCC did not consider the continuum of options for the Student when considering the LRE. The November 30, 2000, IEP documents that three options were considered for the LRE, and the CCC determined the following option as the LRE for the Student: "Special education instruction for the entire instructional day in a general education/public school setting." The Complainant states he signed the IEP in agreement with the CCC decision, with the stipulation that if the change in placement was not successful, the Student could return to the home

school. The November 30, 2000, IEP does not include a statement regarding the Complainant's comment.

4. An annual case review was convened on September 7, 2001, and the CCC determined the Student's LRE to be: "Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day." On January 16, 2002, the CCC determined the Student's LRE to be: "Resource room with special education and related services provided outside the general education classroom during the instructional day." The IEPs dated September 7, 2001, and January 16, 2002, do not document if other options were considered and rejected. The CCC notes dated January 16, 2002, document that the Student's return to the home school will be considered by the start of the 2002-2003 school year.
5. The Complainant asserts that the School did not include an explanation in the Student's IEP that explains why the student is not being educated in the home school. The November 30, 2000, IEP includes notes regarding the student's placement in a separate school; however, there is not a specific statement addressing why the Student does not attend the home school. The IEPs dated September 7, 2001, and January 16, 2002, does not include a reason for the Student's current placement in a school that is not designated as the home school.
6. The Student's mother and father attended a CCC meeting on January 16, 2002. However, at the time of the CCC meeting, there was some confusion about either parent's authority to make educational decisions. On April 26, 2001, the local juvenile court had issued an order restricting the parent's right to make educational decisions. Although the Student was returned to one parent's custody via court order in January 2002, the order did not restore the parent's right to make educational decisions.
7. The Case Summary dated January 16, 2002, documents on page 1 that the "parents do not want school-based therapy", and on page 2, that the Complainant stated "the Student did not need therapy at school." The IEP dated January 16, 2002, states that the CCC determined that the Student was eligible for therapy services; however, the CCC reduced therapy from 2 sessions to 1 session weekly.
8. The Complainant contacted the director approximately two weeks after the January 16, 2001, CCC meeting, regarding a problem with therapy services that the Student was receiving. The director informed the Complainant that a CCC meeting would be required before the therapy services could be terminated. The Complainant agreed and asked the director to "set one up as soon as possible." A CCC meeting was not convened until March 12, 2002. The school's position was that, prior to March 12, 2002, the Complainant did not have the authority to make a decision regarding therapy services for the Student.
9. The Complainant sent the director a letter dated February 20, 2002, revoking consent for therapy sessions that the School was providing for the Student. However, the letter did not specifically request that a CCC be convened. Upon receipt of the Complainant's letter, the School attempted to schedule a conference with both the Complainant and the educational surrogate parent [who is also the court-appointed guardian ad litem (GAL)]. However, on March 1, 2002, the guardian as litem/educational surrogate parent informed the School that he was no longer to be involved in this matter. Although the School had not received anything from the court to indicate the guardian ad litem was no longer required to serve as the Student's educational representative, the School appointed another surrogate parent for the Student. On March 12, 2002, after speaking to the judge, the superintendent notified the director that the judge advised that the Complainant has the authority to make educational decisions for the Student. A CCC meeting convened that same day.

10. The Complainant states that the Student is to sit on the front seat of the bus with the seat belt fastened due to behavior issues and aggressiveness. The *Special Transportation* form attached to the January 16, 2002, IEP, specifies that the Student is sit in the front row of the bus and wear a safety belt. On the return trip home in the afternoon, the Student does not stay in the assigned seat with the seat belt fastened. At the March 12, 2002, CCC meeting, a new behavioral plan was instituted for the bus.

CONCLUSIONS:

1. Findings of Fact #2, #3, and #4 establish the CCC did not consider the continuum of options when deciding the Student's LRE on September 7, 2001, and January 16, 2002. Therefore, a violation of 511 IAC 7-27-9(a)(6), (7), or (9) is found.
2. Finding of Fact #2, #3, and #4 reflect that the Student does not attend her home school, pursuant to her IEP. However, Finding of Fact #5 indicates that none of the November 30, 2000, September 7, 2001, and January 16, 2002, CCC Reports/IEPs include a statement explaining why the Student is not attending her home school. Therefore, a violation of 511 IAC 7-27-9(a)(3) is found.
3. Findings of Fact #6 and #7 reflect that between April 2001 and March 2002, the Complainant did not have the authority to make educational decisions. On January 16, 2002, the Complainant requested that the Student not receive therapy services at school. At that time, the School had received nothing to indicate that the court had restored the Complainant's authority to make educational decisions. However, the CCC decided that reduced therapy services were appropriate. Therefore, no violation of 511 IAC 7-27-7(a) is found regarding the school's continued implementation of therapy services.
4. Finding of Fact #8 and #9 reflect that the Complainant requested a CCC meeting at the end of January 2002, during which time the Complainant's education decision making authority was restricted. Findings of Fact #6 and #9 indicate that the School did not attempt to convene the CCC until approximately one month later due to the uncertainty over who had educational decision making authority. As long as the Complainant was without educational decision making authority, he was not considered the "parent" for whom the School must convene a CCC upon request. The CCC was convened on March 12, 2002, when the School was advised that educational decision making rights were restored to the Student's parents. Therefore, no violation of 511 IAC 7-27-4(a)(3) is found.
5. Finding of Fact #10 establishes that the Student's IEP requires the Student to be seated in the front row of the bus with a seat belt. However, there have been occasions when this has not occurred. Therefore, a violation of 511 IAC 7-27-7(a) is found. However, on March 12, 2002, the CCC developed a plan for keeping the Student seated while riding the bus, and no additional corrective action is required at this time.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Jay School Corporation shall reconvene the CCC:

- a. to consider various options in the continuum to ensure the Student has been placed in

the least restrictive environment; and

- b. to include in the IEP a statement explaining why the Student does not attend her home school.

A copy of the CCC Report/IEP, documenting the CCC's review of the various options considered and an explanation for educating the Student outside of the Student's home school shall be submitted to the Division no later than April 12, 2002.

DATE REPORT COMPLETED: March 22, 2002

